

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **Jean-Yves Daniel**Application No. **10/780,776**Filed: **February 17, 2004**For: **CARTON WITH TOP RETAINING
STRUCTURE AND BLANK
THEREFOR**Art Unit: **3728**Examiner: **Luan Kim Bui**Confirmation No.: **2748****Mail Stop AF**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450Attorney Docket No.: **D-7886**

Submitted Via EFS

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Responsive to the FINAL OFFICE ACTION dated February 6, 2006 and the ADVISORY ACTION dated June 20, 2006, Applicant respectfully requests a pre-appeal brief review in the above-referenced matter. A concise statement setting forth the reasons for the request is set forth below.

REASONS FOR THE REQUEST

The Examiner's rejections of independent claims 1, 10, and 15 over the cited reference are in error due to omission of essential elements needed for a *prima facie* rejection under 35 U.S.C. § 102(b) over International Publication No. WO 98/49071 to Saulas (hereinafter, "**Saulas**"). The Examiner erroneously argues that because the tab 30 in **Saulas** is struck from panel 12, thereby defining an opening, and the tab 30 has an engaging edge 44, 46 configured to engage the underside of a radially protruding part of the container, then the engaging edge 44, 46 is provided by (and "is part of") an edge of the opening, and the *opening* is configured for receiving part of the container. See ADVISORY ACTION, p. 2.

Furthermore, in the FINAL OFFICE ACTION and ADVISORY ACTION, the Examiner failed to establish a *prima facie* basis for unpatentability of independent claims 10 and 15, each of which recites the *lower edge* of the opening comprises an engaging edge for engaging the underside of the radially protruding part. Although Applicant advanced arguments specifically directed to these limitations, the Examiner provided summarily disposed of claims 10 and 15 without considering the limitations that further distinguish these claims over **Saulas**.

REMARKS

Independent claims 1, 10, and 15 pertain to a top gripping carton for accommodating a plurality of articles, such as beverage or food containers. The carton has a top panel including inner and outer overlapping panel portions, and a retaining structure depending from the inner panel portion.

Each of these independent claims includes limitations that are not met by the cited reference, as demonstrated in the following table.

The claim recites:		whereas Saulas discloses:
Claim 1	...the retaining structure [30] is provided with at least one opening [40a, 40b] each for receiving part of a container [A], the <u>engaging edge [42a, 42b] being provided by an edge of the at least one opening [40a, 40b]...</u>	...a support tab [30] struck from the second panel [12], the support tab [30] comprising a main portion [34] and a shoulder portion [36, 38] wherein an edge [44, 46] of the shoulder portion [36, 38] also operatively engages the underside of the radially protruding part [C of a container]... See p. 2, ll. 11-14
Claim 10	...the retaining structure has <u>an opening for receiving a portion of the radially protruding part of the article, and a lower edge of the opening comprises an engaging edge</u> for engaging the underside of the radially protruding part...	
Claim 15	...the retaining structure having <u>an opening for receiving at least a portion of a radially protruding part of an article</u> in a set up condition, and <u>a lower edge of the opening comprises an engaging edge</u> for engaging an underside of the radially protruding part...	

Underlining added. For convenience, element numbers are included above and representative Figures 1 and 3 from the instant application are reproduced below.

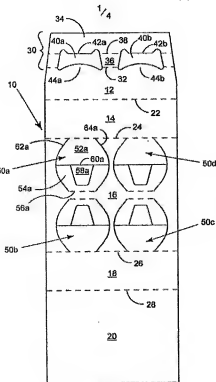


FIGURE 1

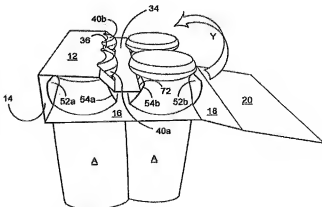


FIGURE 3

Figures 2 and 3 from **Sauls** are reproduced below.

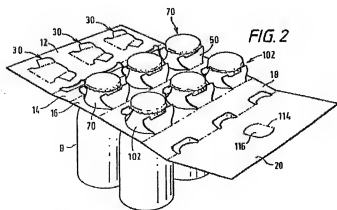


FIG. 2

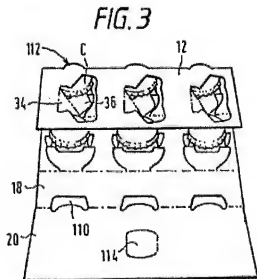


FIG. 3

On pages 8-10 of the REPLY dated June 6, 2006, Applicant advanced arguments that clearly distinguish the opening 40a, 40b of claims 1, 10, and 15 of the instant application from the opening in **Saulas**, which is identified by the Examiner as the opening defined by the tab 30 (see Office Action mailed February 6, 2006, at ¶ 4).

Furthermore, the following should be noted in reviewing these rejections.

- **Saulas** defines "a support tab struck from the second panel" but does not assign any functional significance to the opening that results with regards to retaining the container or receiving any part of the container. See p. 2, ll. 11-12.
- **Saulas** specifically provides a package which comprises one or more containers... and a carton accommodating the containers and having a top panel disposed over the upper portions of the containers. The top panel has a support tab struck therefrom. At p. 3, ll. 10-16. Therefore because the "inner top panel 12 is disposed over the crown corks C and in a substantially parallel and spaced relationship with base panel 16," then it follows that the opening in the inner top panel 12 is also disposed over the crown corks. See p. 7, ll. 28-30.
- In **Saulas**, the "outer top panel 20 is placed in a face to face relationship with inner panel 12" and "[i]nner and outer top panels 12, 20 are secured together by glue or other means known in the art." See p. 8, ll. 13-16. Therefore, it is not possible for the opening formed in inner top panel 12 to receive part of the container.
- **Saulas** does not fail to mention other apertures that do receive part of the containers, and in fact, specifically notes that "part of the crown corks C of each bottle protrude through apertures 106, 110 with the extended portions 108, 112 of panels 12 and 20 respectively being in registry with the top of the protruding portions of each respective bottle." See p. 8, ll. 21-25.

CONCLUSION

As of the FINAL OFFICE ACTION, claims 14 and 19-21 are allowed, and claims 8, 9, 11, 12 and 18 are objected to. For all of the reasons detailed above, Applicant respectfully requests that independent claims 1, 10, and 15 be allowed as well, along with claims 2-7, 16-17, which depend from claim 1, and claims 11-12, which depend from claim 10, and are thus, also patentable as a matter of law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Cynthia R. Parks', followed by a long horizontal flourish.

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Dated: **July 6, 2006**
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